IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8299 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESHBHAI BAIJNATH RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/10/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on the 22nd May, 2000, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Nareshbhai

Baijnath Rathod under the provisions of the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Tirmizi, learned advocate appearing for the petitioner, submitted that apart from other grounds raised in the petition, the petition may be considered on ground of non-supply of documents, though demanded by the petitioner by making a representation. In order to substantiate his say, he has drawn attention of this Court to a representation made on behalf of the detenu on July 8, 2000, which came to be replied to by the detaining authority by communication dated August 9, 2000, supplying the copy of F.S.L. certificate. Mr. Tirmizi has drawn attention of this Court to paragraph 6 of the representation wherein a specific demand in respect of certain statements of witnesses recorded in C.R. No.729 of 2000 was made. This aspect is not considered at all by the authority concerned. Mr. Tirmizi, therefore, submitted that the right of the petitioner of making an effective representation is adversely affected and his continued detention would, therefore, be vitiated. Mr. Tirmizi produces on record the communication received by the detenu and the acknowledgement slip signed by the authority concerned. The same is taken on record.

4. The petition is opposed to by Mr. Bhatt, learned Assistant Government Pleader. He, however, upon instructions, states that the representation was received by the office of the Home Minister on the 10th July, 2000 and was rejected on the 18th July, 2000 with an instruction to the detaining authority to supply the F.S.L. certificate, if available.

5. Keeping these aspects of the case in mind, it is amply clear that representation has not been considered by the authority the way it should have been. A specific demand for supply of statements of certain witnesses has

been neither granted nor rejected. No affidavit in reply is filed. The only communication that is sent to the detenu is regarding rejection of the representation and the only instruction that is given to the detaining authority is to supply the F.S.L.. certificate, if available. Under the circumstances, the right of the detenu envisaged in Article 22(5) of the Constitution of making an effective representation is infringed. His continued detention, therefore, would be vitiated. The petition deserves to be allowed on this ground alone and the same is allowed.

6. In the result, the petition is allowed. The impugned order of detention dated May 22, 2000, passed against the detenu is hereby quashed and set aside. The detenu-Nareshbhai Baijnath Rathod is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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